

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Trans National Communications International, Inc.)	IC No. 04-S88706
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER ON RECONSIDERATION

Adopted: January 29, 2007

Released: January 29, 2007

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we deny a Petition for Reconsideration filed by Trans National Communications International, Inc.¹ (TNCI) asking us to reverse a finding that TNCI changed Complainant's telecommunications service provider in violation of the Commission's rules by failing to obtain proper authorization and verification.² On reconsideration, we affirm that TNCI's actions violated the Commission's carrier change rules.³

I. BACKGROUND

2. In December 1998, the Commission adopted rules prohibiting the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ The rules were designed to take the profit out of slamming.⁵ The Commission applied the rules to all wireline carriers,⁶ and modified its existing requirements for the authorization and verification of preferred carrier changes.⁷

¹ See Petition for Reconsideration filed by Trans National Communications International, Inc. (filed July 12, 2005) (*Petition*) seeking reconsideration of *Trans National Communications International, Inc.*, 20 FCC Rcd 11049 (2005) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB).

² See *Division Order*, 20 FCC Rcd 11049 (2005).

³ See 47 C.F.R. §§ 64.1100 – 64.1190. Two other complaints also were considered in the *Division Order*, but our decision here does not alter our findings regarding those complaints.

⁴ See *id.*; see also 47 U.S.C. § 258(a).

⁵ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1512, para. 4 (1998) (*Section 258 Order*). See also *id.* at 1518-19, para. 13.

⁶ See *id.* at 1560, para. 85. CMRS providers were exempted from the verification requirements. See *Section 258 Order* at 1560-61, para. 85.

⁷ See *Section 258 Order*, 14 FCC Rcd at 1549, para. 66.

3. The rules require that a submitting carrier receive individual subscriber consent before a carrier change may occur.⁸ Pursuant to Section 258, carriers are barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures. Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁹

4. The Commission also adopted liability rules for carriers that engage in slamming.¹⁰ If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.¹¹ Where the subscriber has paid charges to the unauthorized carrier, the unauthorized carrier must pay 150% of those charges to the authorized carrier, and the authorized carrier must refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.¹²

5. The Commission received a complaint on November 10, 2004, alleging that Complainant's telecommunications service provider had been changed from AT&T, Inc.¹³ to Sprint Communications Company (Sprint) without Complainant's authorization.¹⁴ Complainant provided a telephone bill showing carrier change charges for a switch on October 5, 2004, to Sprint "or a company that resells services of SPRINT."¹⁵ Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹⁶ the Division notified Sprint of the complaint.¹⁷ Sprint responded on January 3, 2005, stating that Complainant is a customer of a Sprint reseller, TNCI, and is not a Sprint customer.¹⁸ Per Sprint's

⁸ See 47 C.F.R. § 64.1120. See also 47 U.S.C. § 258(a) (barring carriers from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures).

⁹ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

¹⁰ See 47 C.F.R. §§ 64.1140, 64.1160-70.

¹¹ See 47 C.F.R. §§ 64.1140, 64.1160 (any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change).

¹² See 47 C.F.R. §§ 64.1140, 64.1170.

¹³ AT&T, Inc. was known as SBC Communications at the time of the complaint.

¹⁴ Informal Complaint No. 04-S88706, filed November 10, 2004.

¹⁵ *Id.* at attached telephone bill.

¹⁶ 47 C.F.R. § 1.719 (procedures for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹⁷ See Notice of Informal Complaint No. IC No. 04-S88706 to Sprint from the Deputy Chief, Division, CGB, dated November 19, 2004. When the Division notified Sprint of the complaint, it also provided Sprint with Complainant's telephone bill showing the October 5, 2004, switch.

¹⁸ Sprint's Response to Informal Complaint No. IC 04-S88706, received January 3, 2005. Sprint explained that its customer records did not include an account for Complainant or telephone numbers contained in the complaint; the telephone numbers were located on the account of TNCI, a reseller of Sprint services; TNCI purchases bulk amounts of long distance service from Sprint and resells the services to businesses and consumers at its own rates;

response and pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹⁹ the Division notified TNCI of the complaint.²⁰ The Division also provided to TNCI Complainant's telephone bill accompanying the complaint and Sprint's response. In its response, TNCI stated that it received a request from Complainant on March 15, 2004, to deactivate service for the telephone number at issue, that it did so, and that the phone number was migrated away from TNCI to another long distance service provider.²¹ However, according to TNCI, billing for that phone number continued on Complainant's account due to a system error.²² Because TNCI did not provide proof of authorization for the switch of Complainant's service, as required by the Commission's rules,²³ the Division found that TNCI failed to produce clear and convincing evidence of a valid authorized change, and that its actions resulted in an unauthorized change in Complainant's telecommunications service provider.²⁴ TNCI seeks reconsideration of the *Division Order*.

II. DISCUSSION

6. Based on the record before us, we affirm the *Division Order* and deny TNCI's *Petition*. TNCI argues that the *Division Order* is void as a matter of law because, according to TNCI, Section 208(b)(1) of the Communications Act (Act) requires the Commission to issue an order within five months of the date a complaint is filed.²⁵ TNCI also asserts that it never provided unauthorized service to Complainant because the complaint arises not from an actual unauthorized service switch as defined by the Commission's rules but, rather, from Complainant's failure to notify TNCI of Complainant's decision to change service providers.²⁶ Specifically, TNCI claims that Complainant notified only its underlying local exchange carrier of the decision to change service providers. As a result, TNCI continued forwarding billing statements to Complainant. TNCI also asserts that at no time does Complainant dispute initially requesting service with TNCI.²⁷ TNCI contends that Complainant failed to discontinue

customer calls are routed over Sprint's underlying network and, as a result, customers may be assessed a PIC change charge for the switch of their line to Sprint's underlying network; TNCI operates separately from Sprint and is responsible for billing, collection, and customer service of its own subscribers; and, because Complainant is a TNCI customer and not a Sprint customer, Sprint does not have a letter of Agency (LOA) or other verification for the switch of Complainant's lines. *See id.* at 1.

¹⁹ 47 C.F.R. § 1.719 (procedures for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

²⁰ *See* Notice of Informal Complaint No. IC 04-S88706 to TNCI from the Deputy Chief, Division, CGB, dated March 18, 2005.

²¹ TNCI's Response to Informal Complaint No. IC 04-S88706, received May 18, 2005.

²² *See id.* at 1.

²³ *See* 47 C.F.R. §§ 64.1120- 64.1130.

²⁴ *See Division Order*, 20 FCC Rcd 11049 (2005); *see also* 47 C.F.R. § 64.1150(d).

²⁵ *Petition* at 1. *See* 47 U.S.C. § 208(b)(1) (2006). Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). The Commission received the initial complaint on November 10, 2004, and the *Division Order* was released on June 27, 2005.

²⁶ *See id.* at 1-2.

²⁷ *See id.* at 2.

service with TNCI in the manner agreed upon in a written letter of agency (LOA).²⁸

7. As noted above, TNCI states that Section 208(b)(1) of the Act requires the Commission to issue an order within five months of the date a complaint is filed.²⁹ As indicated in the *Division Order*, however, unauthorized carrier changes are prohibited under Section 258 of the Act.³⁰ Section 258 contains no time frame within which the Commission must process slamming complaints. Thus, we disagree with TNCI's claim that the *Division Order* is void because it was not issued within five months of the filing of the complaint.³¹

8. In addition, we reject TNCI's argument that the complaint involves a billing dispute and not an unauthorized change in service. TNCI did not address the evidence provided to it that Complainant had been switched *back* to TNCI in October of 2004. Complainant submitted a telephone bill reflecting that Complainant had been switched on October 5, 2004, to Sprint *or a company that resells* Sprint services (*emphasis supplied*). In addition, when the Division served Sprint with the complaint, Sprint's January, 2005, response did not deny that there had been a switch to Sprint's network in October, 2004, but simply stated that Complainant's carrier was Sprint's reseller, TNCI. Although the evidence indicates that a carrier change to TNCI occurred in October, 2004, TNCI failed to refute this evidence or provide proof of authorization by Complainant for this change.³² Accordingly, we deny TNCI's *Petition*.³³

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361, 1.106 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.106, 1.719, the Petition for Reconsideration filed by TNCI on July 12, 2005, IS DENIED.

²⁸ See *id* (citing LOA dated October 27, 2002).

²⁹ See *supra*, para. 6.

³⁰ 47 U.S.C. § 258(a).

³¹ We note that TNCI's response to the complaint was untimely filed. Carrier responses to slamming complaints are due 30 days after notification of the complaint. See 47 C.F.R. § 64.1150(d). All slamming complaints are served by Certified Mail – Return Receipt Requested, and a U.S. Postal Service return-receipt card accompanies each notification to document a carrier's receipt of the complaint.

³² See 47 C.F.R. § 64.1150(d).

³³ We also note that Complainant asserted an unauthorized switch of two separate telephone numbers. Sprint's response addressed both telephone numbers and, as mentioned above, stated that those telephone numbers were on TNCI's account. TNCI's response to the complaint addressed only one of Complainant's telephone numbers. Consequently, TNCI's failure to address Complainant's second phone number also evidences a failure to provide proof of verification of an authorized switch regarding the second telephone number. See 47 C.F.R. § 64.1150(d).

10. IT IS FURTHER ORDERED that this Order is effective UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau